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In the matter of a Board of Inquiry constituted under the Ontario Human Rights Code to inquire into a complaint of discrimination in employment by

MR. MAURICE RUEST

against

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
LOCAL 120
WILLIAM A. NICHOLLS & FRED TURNER
(London, Ont.)

REPORT

PROF. H.W. ARTHURS, CHAIRMAN
BOARD OF INQUIRY

For the Ontario Human Rights Commission

E. Marshall Pollock, counsel

For the Respondent

S.L. Robins, Q.C., counsel
Aaron Brown, counsel

By order dated October 4, 1967, I was appointed a Board of Inquiry under the Ontario Human Rights Code to inquire into and report upon a complaint that Mr. Maurice Ruest was discriminated against in respect of his employment by the International Brotherhood of Electrical Workers, Local 120, acting through its business agent, Mr. William A. Nicholls, and its secretary, Mr. Fred Turner.

After lengthy hearings and after considering the evidence and argument on behalf of the Ontario Human Rights Commission and of the respondents, I now make the following report.

I

It is evident, indeed it was never denied, that Mr. Nicholls secured the discharge of Mr. Ruest on January 18, 1967, from his position as an electrician with Samuel Crump Company (Toronto) Ltd. There is equally no doubt that in so acting Mr. Nicholls was acting as an official of, and on behalf of, the respondent local union, IBEW Local 120. Mr. Nicholls was apparently able to secure the discharge of the complainant because of a provision in the collective bargaining agreement requiring the employer to secure workers through the union hiring hall. This control over the labour supply made it virtually certain that the employer would not deny Mr. Nicholls' request that the complainant be discharged. However, it is to be noted that nothing in the collective agreement specifically compelled the employer to comply with his request. The only relevant contractual language creates preference in work opportunities for members of Local 120, but does not otherwise preclude the employment of non-members. Moreover, under the agreement, "the business manager

of the union shall furnish these men with temporary working cards until such time as local union 120 members are available" (article 24.03). Thus, Mr. Nicholls was clearly not acting in accordance with the agreement or for the purpose of securing rights arguably recognized by it.

Likewise there can be no doubt that Mr. Ruest was performing his work at a level of competence that was acceptable to his employer, and that he was not discharged as the result of disciplinary action by his employer. But for the intervention of Mr. Nicholls, he would have continued in employment with the Crump firm for the duration of the project upon which it was working.

Given these relatively clear factual conclusions, there remain for scrutiny two particularly complex questions:

(a) what was Mr. Nicholls' motive in securing the discharge of the complainant, and,

(b) assuming that his motive was to discriminate against the complainant because of his ancestry or place of origin, did the action of Mr. Nicholls amount to a contravention of the Human Rights Code?

Before turning to the first of these questions I must make a preliminary observation about the difficulty of proving motive in connection with an alleged act of discrimination. Seldom will those who act for motives which are forbidden by the law and held in disrepute by the community announce in clear and unmistakeable terms that they are acting for illicit motives. As experience under The Labour Relations Act has indicated, much depends upon the ability of a tribunal to draw inferences from conduct which (at least in the eyes of a person familiar with employment relations) are reasonable if not

compelling. Once these inferences are raised by the conduct of the respondent, an onus shifts to him of explaining to the tribunal that his motives were other than what they appeared to be. The Ontario Labour Relations Board, a body which encounters these problems frequently, articulated this approach in Metropolitan Meat Packers Ltd., (1962) C.C.H. L.L.R. p.16, 230:

> ... it is rarely the case that an employer will inform the employee that he is discharging him for union activity. The conclusion as to the "real reason" for the discharge must therefore often be arrived at on circumstantial evidence and the question of onus of proof becomes a material consideration. The primary onus ... lies on the complainant, but that does not mean that the complainant is bound to prove by direct evidence every fact or conclusion of fact upon which the issue depends. Legitimate and reasonable inference may be drawn from all the evidence adduced and that which is clearly deducible from the evidence is as much proved as if it had been established by direct evidence.... It should be borne in mind that the facts as to the real reasons for discharge often lie peculiarly and necessarily within the knowledge of the respondent.... [I]n an action for wrongful dismissal at common law ... "it was only necessary for the plaintiff to establish that he was employed for an indefinite time and that he was dismissed without notice. The onus then shifted to the defendant to prove that such dismissal was justified."....

This approach, developed by the common law courts and adapted to the context of administrative proceedings in an analogous field of regulatory activity, has obvious relevance for a board of inquiry under the Ontario Human Rights Code. Applying this approach to the instant proceeding, the facts recited above clearly do cast an onus of explanation upon the respondents.

Another fact-finding technique utilized by the Labour Relations Board also recommends itself to me. In considering the motives of a respondent, especially in relation to an alleged act of discrimination, it is often necessary to consider the totality of the respondent's conduct. An act which

may seem innocent in isolation may take on a sinister connotation when considered against a background of other facts. Conversely, an apparently incriminating incident may lose its offensive character when it is overshadowed by a course of conduct which is beyond reproach.

For these reasons, it was necessary for me to hear and consider much evidence which related to incidents prior to, and subsequent to, the discharge of Mr. Ruest. Moreover, it was necessary to draw inferences from these incidents about the attitudes and motives of the respondents in order to determine whether they had discharged the onus of explanation referred to above.

II

As stated, Mr. Ruest was discharged from his employment on January 18, 1967. At the time of his discharge, he had been working for his employer for a period of approximately four months. Much evidence was led by both the Commission and the respondents to prove, respectively, that Mr. Ruest was, or that he was not, a competent journeyman electrician. This evidence related to his employment, particularly in Windsor, Ontario, prior to his arrival on the Crump job in mid-September, 1966. Suffice it to say that Mr. Ruest appeared to have been a passable, although clearly not a first-rate, electrician. He apparently did encounter some difficulty on several occasions in Windsor, but on the other hand he has had substantial work experience, and even recent employers conceded that his abilities were about average. Most significantly, he was clearly not discharged for reasons of incompetence. Thus I put aside as not persuasive any evidence designed to

show that Mr. Ruest was either so competent that his discharge could only have been animated by motives of discrimination, or, on the other hand, that he was so incompetent that he was removed by the union in order to maintain the standards allegedly required of its members.

The crucial events in this case begin with the initial hiring of Mr. Ruest by the Crump firm, and it is therefore necessary to review the relationship of that firm with the union. IBEW Local 120 represents construction and industrial electricians in the London area. However, not all electricians working within its jurisdiction and represented by it for collective bargaining purposes are actually members of Local 120. Due to fluctuations in the volume of construction work particularly, a number of non-members are granted temporary work permits by Local 120 so that periodic increases in the labour force requirements of contractors can be met. As might be expected, collective agreements do preserve a preferred position for Local 120 members over non-members in the event of a work shortage. So far as the evidence discloses, permit holders are mostly members of other IBEW local unions who are sent to the London area in response to a request from Local 120 when local demand for electricians exceeds local supply. However, some permit holders are individual workmen who (like Mr. Ruest) move temporarily or permanently to London either looking for work, or for some other reason.

At the time of the events in question, in order to maintain an acceptable level of competence amongst electricians working within its jurisdiction, Local 120 required that they hold a provincial trade certificate and sit and pass an examination administered by the London municipal

licensing authorities. This latter requirement appears not to have been rigidly enforced, however, because some members of Local 120 had not successfully passed this examination. Indeed, the efficacy of the examination itself as a real test of skill was cast in doubt, retroactively, by its abolition in 1967.

Against this background, the events relating to Mr. Ruest can be more easily understood. In early September, 1966, he first presented himself at the union office and asked Mr. Turner, the secretary, for a job. According to Mr. Turner, Mr. Ruest did not present any proof of skill or work experience, and accordingly was told that he could not be assigned to a job. Mr. Ruest, on the other hand, felt that he had simply received an outright and discourteous refusal which was part of a pattern of discrimination aimed at him. That he was received with something less than warmth seems clear. However, once Mr. Ruest produced appropriate documentation from the Ontario Department of Labour, Mr. Turner promised him a job almost immediately. This fact tends to cast doubt upon his initial conclusion that he had been discriminated against.

Pursuant to Mr. Turner's instructions, the complainant next came to the union office on September 14, 1966. He reported to Mr. Nicholls, the union business manager, who discussed his qualifications with him, urged him to apply for a London license, and then assigned him to the Crump job. At this juncture, both Mr. Nicholls and Mr. Ruest agree, the business manager said "Don't bring any of your buddies". Here again, Mr. Ruest sensed a connotation of discrimination, interpreting "your buddies" to mean "your fellow French Canadians". The statement is at worst equivocal, and

Mr. Nicholls was emphatic in his denial of any such connotation. According to him, he meant to convey to the complainant nothing more sinister than the fact that a flood of job-seekers would be unwelcome. The reason for this, he insisted, was that he had arranged for some electricians to be sent from another local to the Crump job, and that he did not want the available work preempted by others who did not arrive within Local 120's jurisdiction by express invitation. This explanation is not implausible; as the totality of the evidence indicated, Mr. Nicholls' preeminent concern as business manager appears to have been to preserve control over jobs for his local union.

It is also material to record that at the time he was first issued a work permit, on September 14, Mr. Ruest identified himself as a member of IBEW Local 568 in Montreal. Because of this, he was charged a lower monthly fee for his temporary work permit than would have been the case had he not been a union member at all.

This fact was to precipitate the crisis which ultimately led to the discharge of the complainant. In October or November, a union member mentioned to Mr. Nicholls that he had worked with Mr. Ruest in Windsor, during the preceding year, and that Mr. Ruest had been considered a "helper" rather than a journeyman electrician at that time. Since Mr. Ruest was acting as a foreman on the Crump job, his apparent sudden improvement in status was a matter of concern to Mr. Nicholls. Inquiries of the business manager of the IBEW's Windsor local confirmed the fact that the complainant had worked there, and produced the additional information that he was not thought to be a competent journeyman. More importantly, a question was raised in Mr. Nicholls' mind as to how a man working in Windsor could become a member of the Montreal local.

In pursuit of an answer to this question, on December 23, 1966, Mr. Nicholls wrote to the International office of the IBEW asking "when and if this man was initiated". Within a week, this inquiry produced the reply that Mr. Ruest had been initiated in the Montreal local on April 11, 1966. Armed with this information, Mr. Nicholls again contacted the Windsor local and secured a record of Mr. Ruest's employment within its jurisdiction. A letter setting forth the desired information was sent to Mr. Nicholls on January 6, 1967; it showed that the complainant had terminated one job in Windsor on April 9, 1966, and begun another in Windsor on May 13.

Since Mr. Ruest joined the Montreal local only two days after leaving Windsor, and since he returned to Windsor just a few weeks later, Mr. Nicholls was much concerned. As he explained it, in order to be eligible to join a local union, a prospective member must reside and work within its jurisdiction. The clear implication of this statement, made express in the evidence of another witness, is that Mr. Ruest sought and gained admission to the Montreal local by illicit (or, at least, unconstitutional) means. In an indignant letter to the Toronto representative of the International Union, dated January 12, 1967, Mr. Nicholls made his first move against Mr. Ruest:

> ...My main concern in the matter is, how can a man go to another Local where apparently he did not work and be initiated into an I.B.E.W. Local. It has been brought to my attention by a member who worked with this man [Ruest] who was working as a helper in the Windsor area.
>
> Mr. M. Ruest has a family in Windsor who, to the best of my knowledge, has never left the said area for the past three years.
>
> Hoping you can remedy this situation....

The significance of the last two paragraphs quoted must be underlined. As Mr. Nicholls knew, someone who identified herself as "Mrs. Ruest" had been

phoning from Windsor in an attempt to reach Mr. Ruest, and Mr. Nicholls himself had declined to volunteer the complainant's whereabouts to this caller. The overtones of domestic discord suggested by this fact are thus gratuitously raised by Mr. Nicholls in his letter to the International Union. More important yet, the letter concludes with an appeal to the International Union to "remedy this situation" - that is, to take action against Mr. Ruest and the Montreal local. That Mr. Nicholls had by this time developed a hostile attitude towards the complainant is thus made clear. However, it is significant, for purposes of the accusation against him, that at no point does Mr. Nicholls raise the issue of Mr. Ruest's ancestry or place of origin. Indeed, while Mr. Nicholls obviously would have recognized Mr. Ruest as a French Canadian from his name and accent, he would not necessarily have known that his place of origin was Quebec, which he had left some years earlier in order to work in Ontario. On the contrary, the dominant and obvious motivation of Mr. Nicholls, as revealed by this account of his conduct, was to vindicate what he conceived to be the constitutional integrity of the IBEW. Before the issue of how and when Mr. Ruest became a union member was raised, the complainant had been assigned to a job, and permitted to work undisturbed for several months. Only after receiving information about Mr. Ruest's union membership, did Mr. Nicholls begin his campaign against him.

But begin he did. It will be recalled that Local 120 required members and temporary permit holders to sit and pass an examination administered by the London municipal licensing authorities, although this requirement was not rigidly enforced. Apparently Mr. Nicholls had on several occasions urged

Mr. Ruest to take this test; now he insisted that Mr. Ruest actually sit the test on January 14, 1967.

The circumstances surrounding this test are said to constitute further evidence of Mr. Nicholls' determination to harm the complainant. There is some evidence to support this allegation: Mr. Nicholls was a member of the examining board, and was present at the examination; the complainant's examination paper was assigned "not sufficient marks" although some of the individual questions were not graded and no total of the marks was shown; Mr. Ruest successfully passed a provincially-administered test a few months after failing the London test. On the other hand, I expressly refrain from finding that Mr. Nicholls fraudulently interfered with the complainant's examination paper. The other members of the examining board (an electrical contractor and a hydro official) concurred in the assignment of a failing mark to Mr. Ruest's paper, and there was no evidence to suggest that they entered into a conspiracy with Mr. Nicholls. Second, the grievor conceded that he was extremely nervous and admitted (as the document itself shows) that he did not answer all the questions on the examination. Third, much was made of an alleged attempt to segregate the grievor from everyone else in the examination room. Seen in perspective, as explained by another member of the examining board, this was merely a security measure designed to prevent copying, and enforced with equal vigour in relation to all candidates present.

As to the examination, then, I conclude that Mr. Ruest probably failed as the result of his own anxiety, which was partially induced by the knowledge that Mr. Nicholls was bearing down on him, and an awareness that his future job prospects depended on his passing. I am therefore inclined to accept the

testimony of a member of the examining board who explained that Mr. Ruest's paper was not completely marked because even before the end was reached it had become obvious that he would not accumulate a sufficient total. My conclusion as to Mr. Ruest's nervousness also provides a plausible explanation of his subsequent success in the test administered by the provincial Department of Labour, when he was presumably less nervous.

A few days after the examination, on January 18, 1967, Mr. Nicholls secured the complainant's discharge by advising his employer that his "credentials" were not acceptable to the union. The precise words used by Mr. Nicholls were not in evidence before me; in any event they would be less persuasive, because of their self-serving character, than inferences drawn from Mr. Nicholls' actions and testimony. Why, then, was Mr. Ruest ousted from his job? Despite his insistence that he was concerned only with Mr. Ruest's alleged incompetence, which was in his view confirmed by the results of the test on January 14, I cannot avoid the conclusion that Mr. Nicholls' prime preoccupation was the validity of the complainant's union membership. A number of facts converge in this conclusion.

First, to anyone with any knowledge of industrial relations, it is almost inconceivable that a union would intervene to secure the dismissal of an employee on the grounds of incompetence. Almost inevitably, the employer takes the initiative for discharge, and the union resists. This almost universal pattern should not be criticized, given the usual "adversary" posture of parties to a collective bargaining relationship. But the reversal of roles which Mr. Nicholls allegedly undertook in this case raises grave doubts about his fidelity to his basic function as the spokesman, the advocate, of employees:

why should a union official be anxious to protect an employer from poor workmanship, when the employer is content to accept it? whose interests are uppermost in his mind - those of the employer or those of the employees? The explanation is, of course, that in securing the complainant's discharge Mr. Nicholls was serving neither employer nor employee. He was serving the union. By purging it of Mr. Ruest he was, as he saw it, attempting to uphold union constitutional principles and institutional interests.

Second, this general observation about union practice must be considered in the light of the specific course of conduct followed by Mr. Nicholls. The whole thrust of his investigation, and especially his correspondence with the International Union, was to establish that Mr. Ruest was (in his words) "bogus". To quote Mr. Nicholls' language again, "I thought right off the bat ... there must be a nigger in the woodpile and I was going to see what was going on". Or again, in answer to a question in his evidence-in-chief, "Were you suspicious of [Ruest's membership] card at this time?", the answer, "I was". Or again, referring to the way in which the complainant obtained his union membership, "This looked funny to me.... Very suspicious". A final quotation: "... I asked him ... to sit and take the London test, the London license, because it was told me - I had to prove this man wasn't something he said he wasn't [sic]." This last statement puts the whole course of conduct into perspective. Mr. Nicholls thought Mr. Ruest was an imposter, that he had obtained a Montreal membership card without being a qualified journeyman electrician, perhaps, and without satisfying residence requirements in Montreal, almost certainly. This explains why he used Mr. Ruest's failure on the test as an excuse for discharge, although many persons similarly "unqualified" were, and are, working under Local 120's jurisdiction.

After Mr. Ruest was dismissed, he came to the union office with his common law wife, Mrs. Risley. They attempted to persuade Mr. Nicholls to permit the complainant to continue to work; he refused; bitter recriminations followed. Then occurred an exchange between Mrs. Risley and Mr. Nicholls which is said to constitute an overt expression of bigotry by Mr. Nicholls. In his formal complaint filed with the Human Rights Commission, Mr. Ruest quoted two statements allegedly made by Mr. Nicholls during this conversation: "we don't want your kind" and " we don't want Frenchmen here". However, he made no reference to these statements in his testimony until explicitly questioned about them by me, and then he only mentioned the first and not the second. Mrs. Risley, on the other hand, recalled the second and not the first in her evidence-in-chief. In her cross-examination, moreover, both statements took on an entirely different light:

> Q. You suggested to him it [the discharge] might have had something to do with Mr. Ruest being French-Canadian?
>
> A. The last time I asked him, do you have any French-Canadian electricians working for you Mr. Nicholls? And he said "Yes I did. I have quite a few".
>
> Q. And prior to that didn't you ask him "Isn't it because he is French-Canadian?"
>
> A. Yes I did. He said I don't want <u>that</u> French-Canadian here. [emphasis added]
>
> ....
>
> Q. So it was you who brought up the subject about French-Canadians?
>
> A. Yes.
>
> ....
>
> Q. This was at the tail end of the conversation?
>
> A. Yes....

In other words, as appears from Mrs. Risley's cross-examination, Mr. Nicholls was simply responding to her accusation of bigotry, rather than gratuitously offering anti-French Canadian remarks. Moreover, his statement "I don't want that French Canadian here" was obviously a sarcastic retort referring to Mr. Ruest himself rather than a general hostile statement directed against all French Canadians.

Following this exchange with Mr. Nicholls, Mr. Ruest and Mrs. Risley went into Mr. Turner's office. For some weeks, Mr. Ruest had been concerned about the starting date of medical insurance coverage provided through the local union's welfare plan. He and Mrs. Risley now attempted to canvass the matter with Mr. Turner, but by their own admission were too upset to do so. Much evidence was led regarding Mr. Ruest's treatment by Mr. Turner in relation to the union's welfare plan, culminating in this inconclusive interview. The implication was that Mr. Turner had unfairly deprived the complainant of these "fringe benefits" of his employment for the same reasons which allegedly led to his discharge, reasons of ancestry or place of origin. However, the formal complaint makes no reference to any such conduct, no reference was made to it in argument on behalf of the Human Rights Commission, and in any event, I do not find that the evidence warrants a conclusion that Mr. Ruest was wrongfully denied welfare benefits. At worst, I find that there may have been a failure on his part to understand, or on the part of the union to explain, the precise conditions of eligibility.

I summarize my conclusions to this point as follows: while I reject the explanation tendered by Mr. Nicholls, that the complainant was dismissed because of incompetence, I cannot find on the evidence that the

reason for his discharge was his ancestry or place of origin. Rather, as I have already indicated, Mr. Nicholls appears to have been motivated by the conviction that Mr. Ruest had improperly gained union membership and that he was therefore to be deprived of the benefits of his "wrongful" act, namely, his employment.

Perhaps without intending to do so, Mr. Nicholls has discharged the onus of explanation resting upon him and, subject to what is said below, tentatively has convinced me that he was not motivated by a desire to discriminate against Mr. Ruest contrary to the Human Rights Code.

III

I would rest more secure in these tentative conclusions were it not for some general evidence relating to the attitude of Mr. Nicholls and of the membership of Local 120 towards French-Canadians. In recounting the official policy of the Local, and his own personal attitude, Mr. Nicholls emphatically denied any animosity, hostility, or discrimination against French Canadians, or any other minority group. However, Mr. Nicholls did admit to at least one incident in 1966 in which a decision was consciously taken not to bring French Canadians into the London area to meet a labour shortage:

> My view was if people come up from Montreal I will put them to work but at no time did I want a big gang up here because the job was running smooth as it was and another organization had brought a few French Canadians up and they almost had a riot in the same job and I didn't want this to prevail and besides that with the way things were going on the job productionwise I didn't want to see any barriers thrown up.
>
> ....
>
> ...[T]here was a few fellows came up from Montreal and from Quebec and I always employed them on the jobs and it was just that I didn't want to see a large gang on one particular job.

....

> ...[I]t was decided we could get people elsewhere [i.e. other than Quebec] and we would bring them in from other locations sooner than having the problem of language.

This evidence is corroborated by the testimony of Mr. George Lewis, an officer of the Human Rights Commission, and of Mr. Steven Grega, superintendent of a large construction project within Local 120's jurisdiction. Both of these witnesses testified that, to all intents and purposes, no French-Canadian electricians were brought in by Local 120 despite a manpower shortage. Considerable controversy arose as to a statement allegedly made by Mr. Grega, and then repudiated, attributing to Mr. Nicholls the statement that "French-Canadians are trouble-makers". While Mr. Grega contended that this was merely his own interpretation of Mr. Nicholls' remarks, in the light of the testimony quoted above, it is by no means unlikely that Mr. Nicholls in fact made some such remarks.

Evidence was also given by Mr. Bev. DuMaresq, a former president of IBEW Local 120, and himself of French-Canadian descent. Mr. DuMaresq testified that members of Local 120 much resented the fact that French-Canadians talked amongst themselves in their own language, that there was opposition to bringing in French-Canadians in large groups, and that Mr. Nicholls had expressed opposition to doing so. On this last point, Mr. DuMaresq was, for reasons which I shall deal with later, evasive and unhelpful. His evidence was reluctant in the extreme, and (it is fair to say) given only under legal compulsion. Yet despite these limitations, it is clear from his evidence that Mr. Nicholls did oppose any attempt to have large numbers of French-Canadians brought in to take up the slack when a large construction project was begun. Indeed, his reticence was unnecessary because Mr. Nicholls virtually admitted that this was the case.

Much more pointed, however, was a statement attributed to Mr. Nicholls by Mr. DuMaresq: "I don't want any God-damned Frenchmen around here". This may, as Mr. DuMaresq conceded, have been said in the heat of the moment, and may not have been made in reference to the incidents of the matter I am investigating, but it is some clue to the underlying attitudes of Mr. Nicholls.

The picture emerges, then, of a general, although not virulent, prejudice against French-Canadians by Mr. Nicholls and the membership of Local 120. Rationalized as a desire to avoid inter-group tensions on the job, and to ensure easy communication by the use of a common language, this prejudice is translated into more acceptable form. But the fact remains, as Mr. Nicholls admits, that job opportunities are denied to French-Canadian electricians, at least to the extent that no attempt is made to consider them on an equal basis with other IBEW members when assistance is needed to overcome a labour shortage in the London area.

I reject the rationalization advanced by Mr. Nicholls and Mr. DuMaresq as entirely spurious. There is no evidence that facility in the English language is an occupational requirement for electricians, or that any attempt was made to secure electricians from Quebec who possessed this facility. As to the resentment of Local 120 members over the use of a language other than English for purposes of social intercourse, this is precisely the type of extraneous and improper consideration which must be excluded in the allocation of jobs. A heterogeneous country such as Canada, where two founding peoples and dozens of immigrant groups have coalesced in a common enterprise, cannot afford the luxury of compelled conformity. Surrender to a single language, a single standard of social conduct, is not a price which may be exacted by local majorities as a condition of granting the minority a right to which it is by law entitled - equality of employment opportunity.

Do my findings as to the general attitude of Mr. Nicholls and the Local 120 membership alter my tentative conclusion that Mr. Ruest was not the victim of discrimination prohibited by the Human Rights Code?

I cannot, in conscience, find the causal connection between this generalized prejudice and the action which cost Mr. Ruest his job. The fact remains that Mr. Ruest was known by Mr. Nicholls to be a French-Canadian when he was first hired. His name, perhaps his accent, certainly his Montreal local membership, would have brought this fact home to Mr. Nicholls. Yet the complainant was given work and was permitted to continue on the job without molestation for several months. Only when a question arose as to his allegedly improper securing of union membership did Mr. Nicholls move against him. Had no such question arisen, it seems clear that he would not have been interfered with.

IV

The complaint before me relates to a specific act of discrimination aimed at Mr. Ruest. On the facts, as I have indicated, I cannot find that he was "discriminated against ... because of [his] ancestry and place of origin" as alleged in the complaint. I therefore do not recommend that further proceedings be taken against IBEW, Local 120, Mr. Nicholls, or Mr. Turner, under the Human Rights Code.

However, in recommending that this complaint not be further proceeded with, I do not wish to be understood as condoning Mr. Nicholls' conduct or attitudes, or the attitudes of the Local. On the basis of the evidence I have heard, it seems very likely that Mr. Ruest has been denied due process within his union. Whatever his conduct in gaining membership in the Montreal local,

he was surely entitled to a full and fair hearing of the charges against him in an appropriate forum within the union. Moreover, the complete assumption of the executive authority of Local 120 by Mr. Nicholls, however well-motivated in terms of securing union objectives, is a denial of the principles of responsible self-government within the spirit of a democratic union. Throughout these events, a picture emerges of Mr. Nicholls acting without consultation or report, without express mandate or even implied authority from the Local's membership. Allowing for the realities of membership apathy, and for the tradition of broad discretion allowed to business managers in building trades unions, it seems to me that Mr. Nicholls ought to have advised the membership of his activities against Mr. Ruest and sought their approval. What remedy may be available to Mr. Ruest for this infringement of his union rights, what recourse he may have for the possibly unwarranted deprivation of his job, I am not called upon to state. Any recourse he may have in this regard must be sought elsewhere; my jurisdiction is limited to considering whether he has been discriminated against in a very limited sphere - because of his race, creed, colour, nationality, ancestry, or place of origin.

While Mr. Ruest's rights as a citizen of the industrial community must be vindicated elsewhere, it does not follow that the general atmosphere of prejudice within Local 120, to which I have referred, must also be relegated to another forum. I strongly urge that the Human Rights Commission undertake a program of education with Local 120, designed to effect a change of attitude, and ultimately of policy, in regard to French-Canadians and other non-English-speaking groups. In this enterprise, no doubt, the Commission might seek the co-operation of the labour movement itself, and particularly of the Labour Committee for Human Rights. Indeed, if I have misjudged the outlook of Local 120 and of

Mr. Nicholls, or if I have discovered a strain of prejudice which may have been unconscious or unintentional, Local 120 will itself wish to demonstrate its adherence to the principles of the Human Rights Code. At very least, this whole unfortunate incident may provide the union with the occasion for soul-searching and self-scrutiny.

V

In view of my factual finding that Mr. Ruest was not discriminated against for reasons forbidden by the Human Rights Code, it is not strictly necessary for me to canvass the precise legal grounds upon which reliance was placed by the Commission in the presentation of its case. However, in the light of certain representations made by counsel for the respondent union, I do feel obliged to make several observations.

The first point taken was that only IBEW Local 120, and not the two individuals named, was properly a party to the proceeding before me. In fact, the formal complaint is framed against the union "who allegedly committed an unlawful act relating to employment ... through Mr. W.A. Nicholls ... and Mr. Fred Turner". This form of words appears to be drawn from section 4(1) of the Human Rights Code which prohibits discrimination in employment by an "employer or person acting on behalf of an employer". Insofar as the instant complaint relates to section 4(1), then, it reasonably parallels the words of that section and might be construed as a charge against the individuals. However, section 4(2) contains no such double-barrelled prohibition; it simply outlaws certain discrimination by a trade union, and not by "any person acting on its behalf". If that is the section which Messrs. Nicholls and Turner are alleged to have contravened, they do not appear to be caught by it.

But the real objection raised goes well beyond the form of the complaint and reaches its substance.

Section 4(1) is, as noted, a prohibition against discrimination in employment by an "employer or person acting on behalf of an employer". Can it be said that IBEW Local 120, or its officers, are "acting on behalf of an employer" in the operation of a hiring hall which receives orders from employers for electricians and which fills those orders by sending out employees to available jobs? I do not propose to answer this significant question, although I am keenly aware of its potential centrality to any further proceedings under the Human Rights Code. Section 4(2) forbids a trade union to take any action to "exclude from membership or expel or suspend any person or member" or to "discriminate against any person or member" because of "... ancestry or place of origin". Had I found the relevant motives to be present, I could have held that the act of depriving Mr. Ruest of a job was "discrimination" within the meaning of section 4(2). However, as noted above, this act must be attributable to the union and not to individuals.

VI

I have already made reference to the extreme reluctance with which Mr. Bev. DuMaresq testified. Apart from his natural and praiseworthy desire to avoid casting disrepute upon his union, Mr. DuMaresq frankly stated that his reluctance was due to fear of possible reprisals. In particular he was concerned that if he testified adversely to his union and its business manager, even under the compulsion of a subpoena, he would in the future be denied work opportunities and other benefits of union membership. There was no concrete evidence, understandably enough, to support this prediction, but counsel for the union (at my invitation) undertook that no such reprisals would occur.

While I am indebted to union counsel for this undertaking, and while I have no reason to doubt its bona fides, I do not believe that a witness should be obliged to accept such volunteered assurances. My power to compel Mr. DuMaresq to testify was founded on section 13(7) of the Ontario Human Rights Code, which gives to a board of inquiry "all the powers of a conciliation board under section 28 of The Labour Relations Act". That section, in turn, confers power "to summon and enforce the attendance of witnesses and compel them to give ... evidence on oath ... in the same manner as a court of record in civil cases". In order to afford proper protection to a witness thus compelled (or to any other witness) the Human Rights Code ought to be amended to provide the same safeguards as are provided in section 59a of the Labour Relations Act. In essence, that section makes illegal any interference with the employment of a person, by either an employer or a trade union, because he may testify or has testified, or filed a complaint, or otherwise participated in proceedings under the Act.

No anologue to section 59a of the Labour Relations Act is presently found in the Human Rights Code. However, the Minister of Labour, upon the recommendation of a board of inquiry and of the Human Rights Commission, may under section 13(6), "issue whatever order he deems necessary to carry the recommendations of the board into effect". The statute goes on to provide that "such order is final and shall be complied with in accordance with its terms".

I find, therefore, that there is a reasonable apprehension by Mr. DuMaresq, that his testimony may have placed his future status as an electrician and as a member of IBEW Local 120 in jeopardy. Accordingly, if

the Commission and the Minister conceive it to be within their power so to do, I recommend that an order be issued under section 13(6) of the Human Rights Code directing IBEW Local 120, its officers, agents or members, not to interfere in any way with the rights enjoyed by Mr. Bev. DuMaresq as a member of that union, or as an employee or prospective employee represented by it for collective bargaining purposes.

VII

It is also necessary to refer to certain events which preceded the reception of evidence in this case. At the opening of the hearing on December 4, 1967, I was requested to adjourn the hearing to permit the pursuit of settlement discussions. After negotiations lasting some two hours, a settlement was arrived at between the Commission, acting on behalf of the complainant, and the respondent, the terms of which were presented to me. According to this settlement, the complaint was to be withdrawn and an apology was to be delivered to Mr. Ruest. Thus, the interests of each of the protagonists was vindicated. As for the public interest, this was apparently intended to be served by a public announcement by the respondent that it adhered to the principles and practices set forth in the Human Rights Code.

The next day, however, certain events apparently transpired which led the Commission, no doubt at the behest of the complainant, to repudiate this settlement, and to request me to reopen the hearing. As I received no evidence of these events, I make no comment upon them or upon the bona fides of either the complainant, the respondent, or the Commission in the discharge of obligations assumed under the settlement agreement. However, I cannot refrain

from commenting upon the relationship of the settlement to the inquiry which I was instructed to pursue.

The root of the problem is that the Act embodies a series of policy paradoxes. On the one hand, public respect for the policies embodied in the statute is enhanced by publicity, yet at the same time the opportunity to preserve confidentiality and anonymity, and to avoid stigma, is an inducement to a respondent to agree to a settlement. Second, because there is an individual complainant on whose behalf the proceedings instituted, a premium is properly placed upon obtaining effective relief for him. Moreover, the hazards of litigation generate pressures for both sides to compromise their differences with the result that the complainant may forego some degree of vindication. Yet, to the extent that the complainant abandons his claim, the Commission's objectives remain unfulfilled. To this extent, pursuing the private interests of the complainant may be inimical to the full achievement of public purposes.

These paradoxes are reflected in the statistics of the Commission's case load. Of some thousand complaints handled by the Commission between 1961 and 1967, only about 15 have proceeded to the stage of a board of inquiry. Of these 15, by far the greatest number were settled in advance of or during the hearing, with the result that no formal findings of violation or non-violation were made. While this pre-occupation with conciliation is in and of itself commendable, it is at least worthy of consideration that more frequent use of formal investigative or adjudicative machinery, accompanied by a formal assignment of responsibility, might produce even greater educative impact than a series of negotiated settlements. To do no more than to raise the issue, I wonder whether it would not be desirable for a board of inquiry

to determine whether, in the particular circumstances of each case, abandonment of the inquiry at the hearing stage is actually preferable to formal investigation.

To be sure, the mandate of a board of inquiry does not lapse simply because an instrument of settlement has been executed. In law, it is still open to a board of inquiry to report to the Commission favourably or unfavourably upon the settlement. But as a practical matter, representatives of the Commission who have in good faith negotiated a settlement with the respondent, cannot properly adduce evidence and press for a result which would have the effect of detracting from the bargain struck. Under the present practice, settlement means the end of the inquiry. Perhaps it would be desirable to clearly assign to a board of inquiry the task of advising the Commission upon the adequacy of the settlement, and to require the introduction in settlements so negotiated of a proviso that they are subject to the approval of the Commission.

All of which is respectfully submitted.

Toronto, April 9th, 1968.

H.W. Arthurs
Chairman
Board of Inquiry